

## Derby Excel Swimming Club

### Constitution of a Charitable Incorporated Organisation with voting members

#### other than its charity trustees

Date of constitution (last amended): 28<sup>th</sup> February 2023

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#### 1. Name

The name of the Charitable Incorporated Organisation ('the CIO') is **Derby Excel Swimming Club**.

#### 2. National location of principal office

The principal office of the CIO is in Derby, England.

#### 3. Objects

3.1 The objects of the CIO are:

- (a) The promotion of community participation in healthy recreation, primarily but not exclusively, for the benefit of the inhabitants of Derby and the surrounding areas by the provision of development/competitive activities/swimming and associated activities.

3.2 In the furtherance of these objects:

- (a) The CIO is committed to treat everyone equally within the context of its activity and with due respect to the differences of individuals. This shall be, for example, regardless of age, sex, ethnic origin, religion, disability or political persuasion, on any grounds.
- (b) The CIO shall not apply nor endorse unlawful or unjustified discrimination and shall act in compliance with the protections afforded by the Equality Act 2010 (as may be amended from time to time).
- (c) The CIO shall implement the Swim England Equality Policy (as may be amended from time to time).
- (d) The CIO will comply with the Data Protection Act 2018 (as may be amended from time to time).

#### 4. Affiliations

4.1 The CIO shall be affiliated to Swim England East Midland Region and shall adopt and conform to the rules of Swim England East Midland Region and to such other bodies as the CIO may determine from time to time.

4.2 The business and affairs of the CIO shall at all times be conducted in accordance with the Articles, Company Regulations, General Regulations, and Technical Rules of Swim England ("Swim England Regulations") and in particular:

- (a) All competing members shall be eligible competitors as defined in Swim England Regulations;
- (b) The CIO shall in accordance with Swim England Regulations adopt Swim England's Child Safeguarding Policy and Procedures ('Wavepower'); and shall recognise that the welfare of children is everyone's responsibility and that all children and young people have a right to have fun, be safe and be protected from harm.
- (c) Members of the CIO shall in accordance with Swim England Regulations comply with 'Wavepower'.

4.3 By virtue of the affiliation of the CIO to Swim England East Midland Region, the CIO and all members of the CIO acknowledge that they are subject to the Regulations, Rules and Constitutions of:

- (a) Derbyshire County Association:
  - (b) Swim England East Midland Region:
  - (c) Swim England (to include the Code of Ethics):
  - (d) British Swimming (in particular its Doping Control Rules and Protocols and the Judicial Code):
  - (e) LEN, the European governing body for the aquatic sports; and
  - (f) World Aquatics, the World governing body for the aquatic sports.
- (hereinafter defined as “Rules of a Governing Body”).

- 4.4 This constitution shall be read in conjunction with the laws of the land, in particular, the Charities Act 2011 (as may be amended from time to time). For the avoidance of doubt, nothing in this Constitution shall seek supremacy over the law of the land. In the event of any conflict between the Governing Body rules and the laws of the land, the laws of the land shall prevail.
- 4.5 In the event that there shall be any conflict between any rule or by-law of the CIO and any of the Governing Body Rules then the relevant Governing Body Rule shall prevail, to the extent that they do not conflict with the Objects of the Charity.
- 4.6 Nothing in this constitution shall authorise an application of the property of the CIO for the purposes which are not charitable in accordance with the Charities Act 2011 (as may be amended).
- 4.7 The by-laws of the CIO are to be compatible with the laws of the governing body unless the latter conflicts with the Objects in this constitution.
- 4.8 The CIO will ensure that the above principles of equity and equal opportunity are incorporated into all aspects of its activities and the CIO also recognises and adopts the Sport England definition of Sports Equity.

## 5. Powers

- 5.1 The CIO has the power to do anything which is calculated to further its objects or is conducive or incidental to doing so. In particular, the CIO’s powers include, but are not limited to, the power to:
- (a) Borrow money and to charge the whole or any part of its property as security for the repayment of the money borrowed. The CIO must comply as appropriate with sections 124 and 125 of the Charities Act 2011 if it wishes to mortgage land;
  - (b) Buy, take on lease or in exchange, hire or otherwise acquire any property and to maintain and equip it for use;
  - (c) Sell, lease or otherwise dispose of all or any part of the property belonging to the CIO. In exercising this power, the CIO must comply as appropriate with sections 117 and 119-123 of the Charities Act 2011;
  - (d) Employ and remunerate such staff as are necessary for carrying out the work of the CIO. The CIO may employ or remunerate a charity trustee only to the extent that it is permitted to do so by clause 6 of this constitution (Benefits and payments to charity trustees and connected persons) and provided it complies with the conditions of those clauses;
  - (e) Deposit or invest funds, employ a professional fund-manager, and arrange for the investments or other property of the CIO to be held in the name of a nominee, in the same manner and subject to the same conditions as the trustees of a trust are permitted to do by the Trustee Act 2000.

## 6. Application of Income and Property

- 6.1 The income and property of the CIO must be applied solely towards the promotion of the objects.

- (a) A charity trustee is entitled to be reimbursed from the property of the CIO or may pay out of such property reasonable expenses properly incurred by him or her when acting on behalf of the CIO.
  - (b) A charity trustee may benefit from trustee indemnity insurance cover purchased at the CIO's expense in accordance with, and subject to the conditions in, section 189 of the Charities Act 2011.
- 6.2 None of the income or property of the CIO may be paid or transferred directly or indirectly by way of dividend, bonus or otherwise by way of profit to any member of the CIO. This does not prevent a member who is not also a charity trustee receiving:
- (a) A benefit from the CIO as a beneficiary of the CIO;
  - (b) Reasonable and proper remuneration for any goods or services supplied to the CIO.
- 6.3 Nothing in this clause shall prevent a charity trustee or connected person receiving any benefit or payment which is authorised by Clause 6 of this constitution (Benefits and payments to charity trustees and connected persons).
- 6.4 The property of the CIO, other than cash at the bank, shall be vested in not less than two but not more than four Custodians. They shall deal with the property as directed by resolution of the Committee and an entry in the minute book shall be conclusive evidence of such a resolution.
- 6.5 The Custodians shall be elected at a General Meeting of the CIO and shall hold office until death or resignation unless removed by a resolution passed at a General Meeting.
- 6.6 The Custodians shall be entitled to an indemnity out of the property of the CIO for all expenses and other liabilities properly incurred by them in the discharge of their duties.

## **7. Benefits and Payments to Charity Trustees and Connected Persons**

- 7.1 General provisions: No charity trustee or connected person may:
- (a) Buy or receive any goods or services from the CIO on terms preferential to those applicable to members of the public;
  - (b) Sell goods, services, or any interest in land to the CIO;
  - (c) Be employed by, or receive any remuneration from, the CIO;
  - (d) Receive any other financial benefit from the CIO;
- unless the payment or benefit is permitted by sub-clause (2) of this clause, or authorised by the court or the Charity Commission ('the Commission'). In this clause, a 'financial benefit' means a benefit, direct or indirect, which is either money or has a monetary value.
- 7.2 Scope and powers permitting trustees' or connected persons' benefits
- (a) A charity trustee or connected person may receive a benefit from the CIO as a beneficiary of the CIO provided that a majority of the trustees do not benefit in this way.
  - (b) A charity trustee or connected person may enter into a contract for the supply of services, or of goods that are supplied in connection with the provision of services, to the CIO where that is permitted in accordance with, and subject to the conditions in, section 185 to 188 of the Charities Act 2011.
  - (c) Subject to sub-clause (3) of this clause a charity trustee or connected person may provide the CIO with goods that are not supplied in connection with services provided to the CIO by the charity trustee or connected person.
  - (d) A charity trustee or connected person may receive interest on money lent to the CIO at a reasonable and proper rate which must be not more than the Bank of England bank rate (also known as the base rate).
  - (e) A charity trustee or connected person may receive rent for premises let by the trustee or connected person to the CIO. The amount of the rent and the other terms of the lease must

be reasonable and proper. The charity trustee concerned must withdraw from any meeting at which such a proposal or the rent or other terms of the lease are under discussion.

- (f) A charity trustee or connected person may take part in the normal trading and fundraising activities of the CIO on the same terms as members of the public.
- (g) If a trustee fails to follow this procedure, the resolution to confer a benefit upon the trustee will be void and the trustee must repay to the CIO the value of any benefit received by the trustee from the CIO.

### 7.3 Payment for Supply of Goods Only – Controls

The CIO and its charity trustees may only rely upon the authority provided by sub-clause 2(c) of this clause if each of the following conditions is satisfied:

- (a) The amount or maximum amount of the payment for the goods is set out in a written / email agreement between the CIO and the charity trustee or connected person supplying the goods ('the supplier').
- (b) The amount or maximum amount of the payment for the goods does not exceed what is reasonable in the circumstances for the supply of the goods in question.
- (c) The other charity trustees are satisfied that it is in the best interests of the CIO to contract with the supplier rather than with someone who is not a charity trustee or connected person. In reaching that decision the charity trustees must balance the advantage of contracting with a charity trustee or connected person against the disadvantages of doing so.
- (d) The supplier is absent from the part of any meeting at which there is discussion of the proposal to enter into a contract or arrangement with him or her or it with regard to the supply of goods to the CIO.
- (e) The supplier does not vote on any such matter and is not to be counted when calculating whether a quorum of charity trustees is present at the meeting.
- (f) The reason for their decision is recorded by the charity trustees in the minute book.
- (g) A majority of the charity trustees then in office are not in receipt of remuneration or payments authorised by clause 6 of this constitution (Benefits and payments to charity trustees and connected persons).

### 7.4 In Sub-clauses (7.2) and (7.3) of this clause:

- (a) The CIO includes any company in which the CIO:
  - (i) holds more than 50% of the shares; or
  - (ii) controls more than 50% of the voting rights attached to the shares; or
  - (iii) has the right to appoint one or more directors to the board of the company;
- (b) 'Connected person' includes any person within the definition set out in clause 31 of this constitution (Interpretation).

## 8. Conflicts of Interest and Conflicts of Loyalty

A charity trustee must:

- (a) Declare the nature and extent of any interest, direct or indirect, which he or she has in a proposed transaction or arrangement with the CIO or in any transaction or arrangement entered into by the CIO which has not previously been declared; and,
- (b) Absent himself or herself from any discussions of the charity trustees in which it is possible that a conflict of interest will arise between his or her duty to act solely in the interests of the CIO and any personal interest (including but not limited to any financial interest).

Any charity trustee absenting himself or herself from any discussions in accordance with this clause must not vote or be counted as part of the quorum in any decision of the charity trustees on the matter.

## 9. Liability of Members to Contribute to the Assets of the CIO if it is Wound up

9.1 If the CIO is wound up, the members of the CIO have no liability to contribute to its assets and no personal responsibility for settling its debts and liabilities.

## 10. Finance

### 10.1 Financial year

- (a) The financial year of the CIO shall be the period commencing on 1<sup>st</sup> April and ending on 31<sup>st</sup> March. Any change to the financial year shall require the approval of the members in a General Meeting.
- (b) The Annual General Meeting of the CIO shall be held each year on a date in September. The date, time and venue for the Annual General Meeting shall be fixed by the Committee. Adequate time must be given after the financial year end for the preparation, independent examination and dispatch to members of the accounts.

10.2 The financial transactions of CIO shall be recorded by the treasurer in such manner as the trustees think fit.

10.3 All cash and cheques received by the CIO shall be deposited in a bank account in the name of the CIO. No sum shall be drawn from that account except by cheque, by electronic means, telephone methods or online and sanctioned by two of the authorised individuals who shall be the **Chairperson, Secretary and Treasurer** (the Executive Officers). No two Executive Officers should be related.

10.4 Any moneys not required for immediate use may be invested as the trustees in their discretion think fit.

10.5 The trustees shall be responsible for ensuring that the Accounts of the CIO for each financial year be examined by an independent examiner to be appointed by the members in a General Meeting.

10.6 The trustees may borrow money on behalf of the CIO for the purposes of the CIO from time to time at their own discretion up to such limits on borrowing as may be laid down from time to time by a General Meeting for the general upkeep of the CIO or with the prior approval of a General Meeting for any other expenditure, additions or improvements.

10.7 When so borrowing the trustees shall have power to raise in any way any sum or sums of money and to raise and secure the repayment of any sums or sums of money in such manner or on such terms and conditions as it thinks fit, and in particular by mortgage of or charge upon or by the issues of debentures charged upon all or any part of the property of the CIO. See also clause 5 (Powers).

10.8 The Committee shall have no power to pledge the personal liability of any member of the CIO for the repayment of any sums so borrowed.

## 11. Membership of the CIO

### 11.1 Admission of new members

#### 11.1.1 Eligibility

- (a) Membership of the CIO is open to anyone who is interested in furthering its purposes, and who, by applying for membership, has indicated his, her or its agreement to become a member and acceptance of the duty of members set out in sub-clause (3) of this clause.
- (b) A member may be an individual, a corporate body, or an individual or corporate body representing an organisation which is not incorporated.

#### 11.1.2 Admission procedures

- (a) The total membership of the CIO shall not normally be limited. If however the trustees consider that there is a good reason to impose any limit from time to time then the trustees shall put forward appropriate proposals for consideration by the members of the CIO at a

General Meeting. The members shall have the right to impose and remove from time to time any limits on total membership or any category of membership of the CIO.

- (b) For every family with one or more swimmers under the age of 16, a minimum of one parent or guardian must be a member of the CIO and all relevant fees paid.
- (c) All persons who assist in any way with the CIO's activities shall become members of the CIO and hence of Swim England and the relevant Swim England membership fee shall be paid.
- (d) Paid individuals who are not members of the CIO must be members of a body which accepts that its members are bound by Swim England's Code of Ethics, Swim England Regulations relating to 'Wavepower' and those parts of the Judicial Regulations and procedures necessary for their implementation and whilst engaged in activities under the jurisdiction of Swim England shall be subject to all the constraints and privileges of the Judicial Regulations.
- (e) Any person who wishes to become a member of the CIO must submit an application by the CIO's stated process to the Club Secretary (and in the case of a child under 18 years of age the application must be submitted by the applicant's parent or guardian). The CIO application process should be able to view either online or via a paper format.
- (f) Admission to membership shall be determined by the CIO's agreed process. In its consideration of applications for membership, the CIO shall not act in a discriminatory manner and in particular, shall adhere to the Equality Act 2010 (as may be amended). Accordingly, (unless the CIO chooses to restrict its membership to only people who share the same Protected Characteristic) the CIO shall not refuse membership on the basis of a Protected Characteristic within the Equality Act 2010. Neither may refusal be made on the grounds of political persuasion.
- (g) The Club Secretary shall,
  - (i) If they approve an application for membership, notify the applicant of their decision within 21 days.
  - (ii) If they decide to refuse an application for membership, give the applicant their reasons
- (h) The CIO may refuse membership only for good and sufficient cause, such as conduct or character likely to bring the CIO or the sport into disrepute or is in arrears with another Swim England affiliated club, or, in the case of a swimmer, being unable to achieve the entry standards as laid down and provided by the CIO to the applicant for membership.
- (i) Any person refused membership may seek a review of this decision before a 'Review Panel' appointed by the Executive Committee comprised of not less than three members, who may or may not be members of the Executive Committee. The Review Panel shall wherever practicable include one independent member nominated by Swim England East Midland Region.
- (j) The person refused membership shall be entitled to make representations to the Review Panel. The procedures for review shall be at the discretion of the Review Panel whose decision shall be final and binding.

#### 11.2 Transfer of Membership

Membership is not transferable. This includes the transfer of membership rights from a child under 18 years of age to a parent or guardian.

#### 11.3 Duty of Members

It is the duty of each member of the CIO to exercise his or her powers as a member of the CIO in the way he or she decides in good faith would be most likely to further the purposes of the CIO.

#### 11.4 Termination of Membership

- (a) Membership of the CIO comes to an end if:

- (i) The member dies, or, in the case of an organisation (or the representative of an organisation) that organisation ceases to exist; or
  - (ii) The member sends a written / email notice of resignation to the Charity Trustees; or
  - (iii) Any sum of money owed by the member to the CIO is not paid in full within three months of its falling due. Where the membership of a member shall be terminated in this way he/she shall be informed in writing that he/she is no longer a member by notice handed to him/her or sent by post to his/her last known address or by email; or
  - (iv) The charity trustees decide that it is in the best interests of the CIO that the member in question should be removed from membership, and pass a resolution to that effect.
- (b) Before the charity trustees take any decision to remove someone from membership of the CIO they must:
- (i) Inform the member of the reasons why it is proposed to remove him, her or it from membership;
  - (ii) Give the member at least 21 clear days' notice in which to make representations to the charity trustees as to why he, she or it should not be removed from membership;
  - (iii) At a duly constituted meeting of the charity trustees, consider whether or not the member should be removed from membership;
  - (iv) Consider at that meeting any representations which the member makes as to why the member should not be removed; and
  - (v) Allow the member, or the member's representative to make those representations in person at that meeting, if the member so chooses.
  - (vi) Comply with the relevant Judicial Regulations for handling Internal Club Disputes as the same may be revised from time to time. A copy of the relevant Regulations and Procedures are given as an Appendix to this constitution.

#### 11.5 Expulsion and other Disciplinary Action

- (a) A member may not be expelled or subject to clause 11.5 (b) below be made the subject of any other penalty unless the panel hearing the complaint shall by a two-thirds majority vote in favour of the expulsion of or other penalty imposed upon the member.
- (b) The Trustees of the CIO (or any person to whom the Committee shall delegate this power) may temporarily suspend or exclude a member from particular training sessions and/or wider CIO activities, when in their opinion, such action is in the interests of the CIO. Where such action is taken the incident or matter will thereafter be dealt with in accordance with the appropriate Swim England Judicial Regulations.
- (c) Upon expulsion, the former member shall not be entitled to have any part of the annual membership fee to be refunded and must return any CIO or external body's trophy or trophies or equipment held forthwith.
- (d) The Swim England Membership Department and the Swim England Region shall be informed should a member resign when still owing money or goods to the CIO.
- (e) Any trustee suspended from Swim England under the Judicial Regulations shall cease to be a member of the CIO and therefore be removed from office.
- (f) Once created, Honorary and Life membership may only be removed at an Annual General Meeting of the CIO, when it shall be properly proposed in accordance with this constitution.

#### 11.6 Resignation

- 11.6.1 The member who resigns from the CIO in accordance with Clause 11.4(a)(II) shall not be entitled to have any part of the annual membership fee or any other fees, including Swim England fee returned.

11.6.2 Any member removed from membership by the CIO shall not be entitled to have any part of the annual membership fee refunded and must return any CIO property forthwith.

11.6.3 The Swim England membership department shall be informed should a member resign when still owing money or property to the CIO.

#### 11.7 Membership Fees

- (a) The CIO may require members to pay reasonable membership fees to the CIO.
- (b) The members' lesson / training fees, annual membership fees and other one off fees (e.g., additional lessons / training, entry fees, social events, swim camp costs etc) shall be determined from time to time by the Committee, and they shall in so doing make special provision for different classes of membership as the Committee shall determine.
- (c) The annual subscription (pro rata based on time of year) shall be due on joining the CIO. Thereafter the training and other fees as applicable shall be due as determined by the Committee.
- (d) Any member whose training and other fees as applicable are unpaid by the date falling 30 days after the due date for payment may be suspended by the Committee from some or all CIO activities from a date to be determined by the Committee and until such payment is made.
- (e) The trustees, from time to time, have the power to determine the annual membership subscription and other fees. This shall include the power to make such increase in the subscription as shall, where the CIO pays the individual Swim England Membership Fees to Swim England on behalf of members, be consequential upon an increase in individual Swim England membership fees. Any increase in subscriptions shall be advised to the members in writing / email with the reasons for any increase to be reported to the members at the next Annual General Meeting.
- (f) The Trustees shall have the power in special circumstances to remit the whole or part of the fees, including the Swim England membership fees, to address issues of social inclusion.

#### 11.8 Classes of Membership:

- 11.8.1. The trustees may establish classes of membership with different rights and obligations and shall record the rights and obligations in the register of members.
- 11.8.2. The trustees may not directly or indirectly alter the rights or obligations attached to a class of membership.
- 11.8.3. The provisions in the Constitution about general meetings shall apply to any meeting relating to the variation of the rights of any class of members.
- 11.8.4. The following classes of membership shall apply to members of the CIO:
  - (a) Ordinary junior [competitive, training and/or learning to swim] member (all disciplines): aged under 16 years of age. Members in this category do not have the right to attend and vote at general meetings. These members must be registered as Club Train or Compete members with Swim England with the CIO or another club outside of those affiliated to Derbyshire County Association as their fee paying club.
  - (b) Ordinary junior pathway [competitive] member (all disciplines): aged under 16 years of age. Members in this category do not have the right to attend and vote at general meetings. These members have a Derbyshire club not including the CIO as their fee paying club and must be registered as Club Compete.
  - (c) Ordinary [competitive, training and/or learning to swim] member (all disciplines): aged 16 years of age and over. Members in this category have the right to attend and vote at general meetings. These members must be registered as Club Train or Compete members with Swim England with the CIO or another club outside of those affiliated to



Derbyshire County Association as their fee paying club. Members in this category aged 18 years or over will be eligible to hold office in the CIO.

- (d) Ordinary pathway [competitive] member (all disciplines): aged 16 years of age and over. Members in this category have the right to attend and vote at general meetings. These members have a Derbyshire club not including the CIO as their fee paying club and must be registered as Club Compete. Members in this category aged 18 years or over will be eligible to hold office in the CIO.
  - (e) Associate [competitive or training] members (all disciplines) aged 16 years of age and over who are students and only use the CIO facilities during school or college holidays and do not have the CIO as their fee paying clubs for the purposes of Swim England. Members in this category do not have the right to attend and vote at general meetings or hold officer in the CIO.
  - (f) Ordinary [non - competitive, training and/or learning to swim] member (all disciplines): aged 16 years of age and over. Members in this category have the right to attend and vote at general meetings. These members must be registered as Club Support with Swim England. Members in this category aged 18 years or over will be eligible to hold office in the CIO.
  - (g) Ordinary junior [non - competitive, training and/or learning to swim] member (all disciplines): aged under 16 years of age. Members in this category do not have the right to attend and vote at general meetings. These members must be registered as Club Support with Swim England.
  - (h) Ceremonial positions and Honorary Members / Life Members:
    - (i) The annual general meeting of the CIO, if it thinks fit may elect a President and Vice- President. A President or Vice-President need not be a member of the CIO and on election shall, ex officio, be an honorary member of the CIO and must be included in the CIO's Annual Return of Members to Swim England. Members in this category have the right to attend a general meeting without the right to vote.
    - (ii) The trustees may elect any person as an honorary member of the CIO for such period as it thinks fit, or as a life member, and they shall be entitled to all the privileges of membership except that they shall not be entitled to attend and vote at general meetings and serve as an officer or trustee unless any such person shall have retained their ordinary membership of the CIO. The CIO and Swim England membership fees may be paid by the CIO or the individual. Such honorary members and life members must be included in the CIO's annual return to Swim England as to membership.
- 11.8.5. Ordinary junior and Ordinary [competitive, training and/or learning to swim] members as detailed in 11.8.4 (a) and (c) shall be eligible to compete in the name of the CIO in all Competitions.
- 11.8.6 Ordinary junior pathway and Ordinary pathway [competitive] members as detailed in 11.8.4 (b) and (d) shall be eligible to compete in the name of the CIO Competitions, excluding:  
Derbyshire County Championships, all club league activity. These members must also agree to the Pathway Acknowledgement [Appendix 1] before membership is granted.

## **12. Members' Decisions**

### **12.1. General Provisions**

- (a) Except for those decisions that must be taken in a particular way as indicated in sub-clause (12.4) of this clause, decisions of the members of the CIO may be taken by vote at a general meeting as provided in sub-clause (12.2) of this clause or by written resolution as provided in sub clause (12.3) of this clause.

#### 12.2. Taking Ordinary Decisions by Vote

- (a) Subject to sub-clause (12.4) of this clause, any decision of the members of the CIO may be taken by means of a resolution at a general meeting. Such a resolution may be passed by a simple majority of votes cast at the meeting.

#### 12.3 Taking Ordinary Decisions by Written Resolution without a General Meeting

- (a) Subject to sub-clause (12.4) of this clause, a resolution in writing agreed by a simple majority of all the members who would have been entitled to vote upon it had it been proposed at a general meeting shall be effective, provided that:
  - (i) a copy of the proposed resolution has been sent to all the members eligible to vote; and
  - (ii) a simple majority of members has signified its agreement to the resolution in a document or documents which are received at the principal office within the period of 28 days beginning with the circulation date. The document signifying a member's agreement must be authenticated by their signature (or in the case of an organisation which is a member, by execution according to its usual procedure), by a statement of their identity accompanying the document, or in such other manner as the CIO has specified.
- (b) The resolution in writing may comprise several copies to which one or more members have signified their agreement.
- (c) Eligibility to vote on the resolution is limited to members who are members of the CIO on the date when the proposal is first circulated in accordance with paragraph (a) above.
- (d) Not less than 10% of the members of the CIO may request the charity trustees to make a proposal for decision by the members.
- (e) The charity trustees must within 21 days of receiving such a request comply with it if:
  - (i) The proposal is not frivolous or vexatious, and does not involve the publication of defamatory material;
  - (ii) The proposal is stated with sufficient clarity to enable effect to be given to it if it is agreed by the members; and
  - (iii) Effect can lawfully be given to the proposal if it is so agreed.
- (f) Sub-clauses (a) to (c) of this clause apply to a proposal made at the request of members.

#### 12.4. Decisions that must be taken in a particular way

- (a) Any decision to remove a trustee must be taken in accordance with clause 18 (2) of this constitution (Retirement and removal of charity trustees).
- (b) Any decision to amend this constitution must be taken in accordance with clause 30 of this constitution (Amendment of Constitution).
- (c) Any decision to wind up or dissolve the CIO must be taken in accordance with clause 31 of this constitution (Voluntary winding up or dissolution).
- (d) Any decision to amalgamate or transfer the undertaking of the CIO to one or more other CIO's must be taken in accordance with the provisions of the Charities Act 2011.

### **13. General Meetings of Members**

#### 13.1. Types of General Meeting

- (a) There must be an annual general meeting (AGM) of the members of the CIO. The first AGM must be held within 18 months of the registration of the CIO, and subsequent AGMs should be held every 12 months but at intervals of not more than 15 months.
- (b) The Annual General Meeting of the CIO shall be held each year on a date in September. The date, time and venue for the Annual General Meeting shall be fixed by the Committee.
- (c) The purpose of the Annual General Meeting is to transact but not be limited to the following business:
- (d) To receive the annual statement of accounts (duly audited or examined where applicable)
- (e) To receive the trustees' annual report, including that of the Chairperson,
- (f) To elect as trustees the Executive Officers and other members of the Committee as required under clause 15 of this constitution (The Committee).
- (g) To remove and elect the independent examiner (who must not be a member of the Committee or a member of the family of a member of the Committee) or confirm that he/she remain in office.
- (h) To elect a President if required. See also clause 11 (Ceremonial Positions, Honorary Members and Life Members).
- (i) To elect Honorary and Life members of the CIO as appropriate.
- (j) To decide on the dissolution of existing honorary membership categories. See also clause 11 (Ceremonial Positions, Honorary Members and Life Members). Where the effected holder or holders of the Honorary or Life membership do not attend or are unable to attend the Annual General Meeting, the Chairperson may allow the matter in so far as it relates to the absent person(s) to proceed directly to vote, which shall be by show of hands OR secret ballot (method to be decided by the Chairperson).
- (k) To decide on any resolution, proposal or submission that is duly submitted in accordance with sub-clause (d) of this clause. If a proposal to alter the constitution of the CIO is to be considered at the meeting, the text of the proposed alteration must be included – see also clause 31 (Voluntary winding up or dissolution).
- (l) To elect or reaffirm the Custodians of the Club.
- (m) Notice of any resolution, proposal or submission to be considered at a General Meeting, duly proposed and seconded shall be given in writing or by electronic means to the Secretary not later than 21 days prior to the date of the meeting. Nominations for election of members to any office or for membership of the Committee shall be made in writing / email by the proposer and seconder to the Secretary not later than 21 days prior to the Annual General Meeting. The nominee shall be required to indicate in writing on the nomination form (either written or electronic) their willingness to stand for election.
- (n) Other general meetings of the members of the CIO may be held at any time. These shall be called special general meetings.
- (o) The Secretary or in his/her absence another Executive Committee member shall take minutes at the annual and other general meetings.
- (p) All general meetings must be held in accordance with the following provisions.

### 13.2. Calling General Meetings

- (a) The charity trustees:
  - (i) Must call the annual general meeting of the members of the CIO in accordance with sub-clause (13.1) of this clause, and identify it as such in the notice of the meeting; and
  - (ii) May call a special general meeting of the members at any time.
  - (iii) May only in the event of exceptional circumstances postpone a general meeting once the date, time and venue has been fixed and advised to members. A postponed general meeting shall normally be reconvened on a date within one month of the

original date and a minimum of 7 days advance notice given to the members of the rescheduled date, time and venue. At this meeting, the same agenda as originally issued shall be used.

- (b) The charity trustees must, within **28** days, call a general meeting of the members of the CIO if:
  - (i) They receive a request to do so from one tenth of the membership eligible to attend and vote at a general meeting; and
  - (ii) The request states the general nature of the business to be dealt with at the meeting, and is authenticated by the member(s) making the request.
- (c) If, at the time of any such request, there has not been any general meeting of the members of the CIO for more than 12 months, then sub-clause (b)(i) of this clause shall have effect as if 5% were substituted for 10%.
- (d) Any such request may include particulars of a resolution that may properly be proposed, and is intended to be proposed, at the meeting.
- (e) A resolution may only properly be proposed if it is lawful, and is not defamatory, frivolous or vexatious.
- (f) Any general meeting called by the charity trustees at the request of the members of the CIO must be held within 28 days from the date on which it is called.
- (g) If the charity trustees fail to comply with this obligation to call a general meeting at the request of its members, then the members who requested the meeting may themselves call a general meeting but in doing so they must comply with the provisions of this constitution.
  - (i) A general meeting called in this way must be held not more than 3 months after the date when the members first requested the meeting.
  - (ii) The CIO must reimburse any reasonable expenses incurred by the members calling a general meeting by reason of the failure of the charity trustees to duly call the meeting, but the CIO shall be entitled to be indemnified by the charity trustees who were responsible for such failure.

### 13.3. Notice of General Meetings

- (a) The charity trustees, or, as the case may be, the relevant members of the CIO, must give at least **21** clear days' notice of any general meeting to all of the members, and to any charity trustee of the CIO who is not a member.
- (b) A minimum of 21 days in advance of the Annual General Meeting, the Secretary shall write or make contact electronically with all holders of honorary or life membership drawing any proposal related to their category of membership to his/her/their attention and inviting him/her/them to attend the Annual General Meeting.
- (c) If it is agreed by not less than 90% of all members of the CIO, any resolution may be proposed and passed at the meeting even though the requirements of sub-clause (3)(a) of this clause have not been met. This sub-clause does not apply where a specified period of notice is strictly required by another clause in this constitution, by the Charities Act 2011 or by the General Regulations.
- (d) The notice of any general meeting must:
  - (i) state the time and date of the meeting;
  - (ii) give the address at which the meeting is to take place;
  - (iii) give particulars of any resolution which is to be moved at the meeting, and of the general nature of any other business to be dealt with at the meeting; and
  - (iv) if a proposal to alter the constitution of the CIO is to be considered at the meeting, include the text of the proposed alteration;

- (v) include, with the notice for the AGM, the annual statement of accounts and trustees' annual report, details of persons standing for election or re- election as trustee, or where allowed under clause 22 (Use of electronic communication), details of where the information may be found on the CIO's website.
- (e) Proof that an envelope containing a notice was properly addressed, prepaid and posted; or that an electronic form of notice was properly addressed and sent, shall be conclusive evidence that the notice was given. Notice shall be deemed to be given 48 hours after it was posted or sent.
- (f) The proceedings of a meeting shall not be invalidated because a member who was entitled to receive notice of the meeting did not receive it because of accidental omission by the CIO.

#### 13.4. Chairing of General Meetings

- (a) The person nominated as chair by the charity trustees under clause 21.2 of this constitution (Chairing of Meetings), shall, if present at the general meeting and willing to act, preside as chair of the meeting. If no trustee is present and willing to chair the meeting within 30 minutes after the time appointed for holding it, the members of the charity who are present at a general meeting shall elect a Chairperson to preside at the meeting.
- (b) The Chairperson shall at all General Meetings have unlimited authority upon every question of order and shall be, for the purpose of such meeting, the sole interpreter of the Constitution of the CIO.

#### 13.5. Quorum at General Meetings

- (a) No business may be transacted at any general meeting of the members of the CIO unless a quorum is present when the meeting starts.
- (b) Subject to the following provisions, the quorum for general meetings shall be seven members entitled to attend and vote at the meeting or if greater, such number that represents one tenth of the total membership at the time. The quorum must include at least one Officer. An organisation represented by a person present at the meeting in accordance with sub-clause (13.7.) of this clause, is counted as being present in person.
- (c) If the meeting has been called by or at the request of the members and a quorum is not present within 30 minutes of the starting time specified in the notice of the meeting, or during the meeting a quorum ceases to be present, the meeting is closed.
- (d) If the meeting has been called in any other way and a quorum is not present within 30 minutes of the starting time specified in the notice of the meeting, the chair must adjourn the meeting. The date, time and place at which the meeting will resume must either be announced by the chair or be notified to the CIO's members at least seven clear days before the date on which it will resume.
- (e) If a quorum is not present within 15 minutes of the start time of the adjourned meeting, the member or members present at the meeting constitute a quorum.
- (f) If at any time during the meeting a quorum ceases to be present, the meeting may discuss issues and make recommendations to the trustees but may not make any decisions. If decisions are required which must be made by a meeting of the members, the meeting must be adjourned.
- (g) Co-opted Members shall not count towards the quorum.

#### 13.6. Voting at General Meetings

- (a) Any decision other than one falling within clause 12.4 of this constitution (Decisions that must be taken in a particular way), shall be taken by a simple majority of votes cast at the meeting. Every eligible member has one vote. Only eligible members who have reached their 16<sup>th</sup> birthday shall be entitled to be heard and to vote on all matters.

- (b) A resolution put to the vote of a meeting shall be decided on a show of hands, unless (before or on the declaration of the result of the show of hands) a poll is duly demanded. A poll may be demanded by the chair or by at least 10% of the members present in person at the meeting.
- (c) A poll demanded on the election of a person to chair the meeting or on a question of adjournment must be taken immediately. A poll on any other matter shall be taken, and the result of the poll shall be announced, in such manner as the chair of the meeting shall decide, provided that the poll must be taken, and the result of the poll announced, within 30 days of the demand for the poll.
- (d) A poll may be taken:
  - (i) At the meeting at which it was demanded; or
  - (ii) At some other time and place specified by the chair; or
  - (iii) Through the use of postal or electronic communications.
- (e) In the event of an equality of votes, whether on a show of hands or on a poll, the chair of the meeting shall have a second, or casting vote.
- (f) Any objection to the qualification of any voter must be raised at the meeting at which the vote is cast and the decision of the chair of the meeting shall be final.
- (g) The result of the vote must be recorded in the minutes of the CIO but the number or proportion of votes cast need not be recorded.

#### 13.7. Representation of Organisations and Corporate Members

- (a) An organisation or a corporate body that is a member of the CIO may, in accordance with its usual decision-making process, authorise a person to act as its representative at any general meeting of the CIO.
- (b) The representative is entitled to exercise the same powers on behalf of the organisation or corporate body as the organisation or corporate body could exercise as an individual member of the CIO.

#### 13.8. Adjournment of Meetings

The chair may, with the consent of a meeting at which a quorum is present, (and shall if so directed by the meeting) adjourn the meeting to another time and/or place. No business may be transacted at an adjourned meeting except business which could properly have been transacted at the original meeting.

### 14. Charity Trustees

#### 14.1. Functions and duties of charity trustees

- (a) The charity trustees shall manage the affairs of the CIO and may for that purpose exercise all the powers of the CIO. The trustees shall have the sole right of appointing and determining the terms and conditions of service of the **paid and volunteer workforce** of the CIO.
- (b) The trustees shall have power to enter into contracts for the purposes of the CIO on behalf of all the members of the CIO.
- (c) The trustees shall be entitled to an indemnity out of the assets of the CIO for all expenses and other liabilities properly incurred by them in the management of the affairs of the CIO.
- (d) It is the duty of each charity trustee:
  - (i) To exercise his or her powers and to perform his or her functions as a trustee of the CIO in the way he or she decides in good faith would be most likely to further the purposes of the CIO; and
  - (ii) To exercise, in the performance of those functions, such care and skill as is reasonable in the circumstances having regard in particular to:

- (iii) Any special knowledge or experience that he or she has or holds himself or herself out as having; and
- (iv) If he or she acts as a charity trustee of the CIO in the course of a business or profession, to any special knowledge or experience that it is reasonable to expect of a person acting in the course of that kind of business or profession.

#### 14.2. Eligibility for Trusteeship

- (a) Every CIO trustee must be a natural person.
- (b) A trustee must be a member of the CIO or the nominated representative of an organisation that is a member of the CIO.
- (c) No one may be appointed as a charity trustee:
  - (i) If he or she is under the age of 18 years; or
  - (ii) If he or she would automatically cease to hold office under the provisions of clause 18.1 of this constitution (Retirement and removal of charity trustees).
- (d) No one is entitled to act as a charity trustee whether on appointment or on any re-appointment until he or she has expressly acknowledged, in whatever way the charity trustees decide, his or her acceptance of the office of charity trustee.
- (e) A trustee must be a member of the club and Swim England.

#### 14.3. Number of Charity Trustees

- (a) There must be at least **three** charity trustees. If the number falls below this minimum, the remaining trustee or trustees may act only to call a meeting of the charity trustees, or appoint a new charity trustee.
- (b) The maximum number of charity trustees is **twelve**. The charity trustees may not appoint any charity trustee if as a result the number of charity trustees would exceed the maximum.

#### 14.4. First Charity Trustees

- (a) The first charity trustees of the CIO are:
  - Barbara Ingram
  - Philippa Hibbs
  - Nisha Baines

#### 14.5. The Executive Officers of the Charity are the:

- (a) Chairperson;
- (b) Secretary; and
- (c) Treasurer.

#### 14.6. Non-Executive Trustees:

The Charity shall have the following Non-Executive trustee position;

14.6.1. In accordance with Wavepower the Committee shall appoint a member of the Club as Welfare Officer who must be not less than 18 years of age, who should have an appropriate background and who is required to undertake appropriate training in accordance with Wavepower. The Welfare Officer shall not be related to or in a relationship with any one of the 'Executive Officers of the Club' or the Club's Coaches or Teachers.

14.6.2. The Welfare Officer will have a right to attend Committee meetings without a power to vote. Attendance at meetings will be for the purpose of sharing or addressing matters relating to Welfare.

### 15. Appointment of the Charity Trustees and Committee

- 15.1 Nominations for election of charity trustees shall be made in writing by the proposer and seconder to the Secretary not later than **21 days** before the annual general meeting. The nominee shall indicate in writing his/her willingness to stand for election.
- 15.2 At every annual general meeting of the members of the CIO, one-third of the charity trustees shall retire from office. If the current number of charity trustees is not three or a multiple of three, then the number nearest to one-third shall retire from office, but if there is only one charity trustee, he or she shall retire.
- 15.3 The charity trustees to retire by rotation shall be those who have been longest in office since their last appointment or reappointment. If any trustees were last appointed or reappointed on the same day those to retire shall (unless they otherwise agree among themselves) be determined by lot.
- 15.4 The vacancies so arising may be filled by the decision of the members at the annual general meeting; any vacancies not filled at the annual general meeting may be filled as provided in sub-clause (15.6) of this clause.
- 15.5 The members or the charity trustees may at any time decide to appoint a new charity trustee, whether in place of a charity trustee who has retired or been removed in accordance with clause 17 of this constitution (Retirement and removal of charity trustees), or as an additional charity trustee, provided that the limit specified in clause 14.3 on the number of charity trustees would not as a result be exceeded.
- 15.6 A person so appointed by the members of the CIO shall retire in accordance with the provisions of sub-clauses (3) and (4) of this clause. A person so appointed by the charity trustees shall retire at the conclusion of the next annual general meeting after the date of his or her appointment, and shall not be counted for the purpose of determining which of the charity trustees is to retire by rotation at that meeting.
- 15.7 The Committee shall appoint a member of the CIO as Welfare Officer who must be not less than 18 years of age who should have an appropriate background and who is required to undertake appropriate training in accordance with 'Wavepower'. Although the Welfare Officer will not be a trustee, he/she will have a right to attend Committee meetings without power to vote.
- 15.8 The trustees shall maintain an Accident/Incident book (either hard copy or electronic) in which all accidents/incidents to CIO members at club related activities shall be recorded. Details of such accidents/incidents shall be reported to the insurers in accordance with the Swim England Accident/Incident Notification guidelines. The CIO shall make an annual return to the Swim England Membership Department indicating whether or not an entry has been made in the prescribed online form.
- 15.9 The Committee shall appoint a member of the CIO who shall be the responsible for overseeing the CIO's compliance with data protection laws.

## **16. Information for new Charity Trustees**

The charity trustees will make available to each new charity trustee, on or before his or her first appointment:

- (a) A copy of this constitution and any amendments made to it; and
- (b) A copy of the CIO's latest trustees' annual report and statement of accounts.

## **17. Retirement and removal of Charity Trustees**

- 17.1. A charity trustee ceases to hold office if he or she:
  - (a) Retires by notifying the CIO in writing / email (but only if enough charity trustees will remain in office when the notice of resignation takes effect to form a quorum for meetings);
  - (b) Retires by rotation in accordance with clause 14 (The Committee) of this constitution;
  - (c) Is absent without the permission of the charity trustees from all their meetings held within a period of six months and the trustees resolve that his or her office be vacated;
  - (d) Dies;



- (e) In the written / email opinion, given to the CIO, of a registered medical practitioner treating that person, has become physically or mentally incapable of acting as a trustee and may remain so for more than three months;
- (f) Is removed by the members of the CIO in accordance with sub-clause (2) of this clause;
- (g) Is disqualified from acting as a charity trustee by virtue of sections 178-180 of the Charities Act 2011 (or any statutory re-enactment or modification of that provision).

17.2. A charity trustee shall be removed from office if a resolution to remove that trustee is proposed at a general meeting of the members called for that purpose and properly convened in accordance with clause 12 of this constitution (General meetings of members) and the resolution is passed by a two-thirds majority of votes cast at the meeting.

17.3. A resolution to remove a charity trustee in accordance with this clause shall not take effect unless the individual concerned has been given at least 14 clear days' notice in writing that the resolution is to be proposed, specifying the circumstances alleged to justify removal from office, and has been given a reasonable opportunity of making oral and/or written / email representations to the members of the CIO.

17.4. A trustee shall cease to hold office if he or she ceases to be a member of the Charity.

## **18. Reappointment of Charity Trustees**

Any person who retires as a charity trustee by rotation or by giving notice to the CIO is eligible for reappointment.

## **19. Taking of Decisions by Charity Trustees**

19.1 Any decision may be taken either:

- (a) At a meeting of the charity trustees; or
- (b) By resolution in writing or electronic form agreed by a majority of the charity trustees, which may comprise either a single document or several documents containing the text of the resolution in like form to each of which one or more charity trustees has signified their agreement. Such a resolution shall be effective provided that:
  - (i) a copy of the proposed resolution has been sent, at or as near as reasonably practicable to the same time, to all of the charity trustees; and
  - (ii) the majority of all of the charity trustees has signified agreement to the resolution in a document or documents which has or have been authenticated by their signature, by a statement of their identity accompanying the document or documents, or in such other manner as the charity trustees have previously resolved, and delivered to the CIO at its principal office or such other place as the trustees may resolve [within 28 days of the circulation date].

19.2 Subject to Clause 19.2 all acts done by a meeting of trustees, or of a committee of trustees, shall be valid notwithstanding the participation in any vote of a trustee who:

- (i) was disqualified from holding office, or
- (ii) had previously retired or
- (iii) had been obliged by the constitution to vacate office, or
- (iv) was not entitled to vote on the matter, whether by reason of a conflict of interest or otherwise, if without:
  - (a) the vote of that trustee; and
  - (b) that trustee being counted in the quorum,
- (v) the decision has been made by a majority of the trustees at a quorate meeting.

- 19.3 Clause 19.1. does not permit a trustee or a connected person to keep any benefit that may be conferred upon him or her by a resolution of the trustees or of a committee of trustees if, but for Clause 19.1. the resolution would have been void, or if the trustee has not complied with Clause 8.

## 20. Delegation by Charity Trustees

- 20.1. The charity trustees may delegate any of their powers or functions to a sub-committee or working group, and, if they do, they must determine the terms and conditions on which the delegation is made. The charity trustees may at any time alter those terms and conditions, or revoke the delegation.

All sub-committees and working groups shall periodically report their proceedings to the Committee and shall conduct their business in accordance with the directions of the Committee.

- 20.2. This power is in addition to the power of delegation in the General Regulations and any other power of delegation available to the charity trustees, but is subject to the following requirements:
- (a) A committee may consist of two or more persons, but at least one member of each committee must be a charity trustee;
  - (b) The acts and proceedings of any committee must be brought to the attention of the charity trustees as a whole as soon as is reasonably practicable; and
  - (c) The charity trustees shall from time to time review the arrangements which they have made for the delegation of their powers.

## 21. Meetings and Proceedings of Charity Trustees (the Committee)

The trustees may regulate their proceedings as they think fit, subject to the provisions of this constitution.

### 21.1. Calling Meetings

- (a) Any charity trustee may call a meeting of the charity trustees. The Secretary must call a meeting of the trustees if requested to do so by a trustee.
- (b) Subject to that, the charity trustees shall decide how their meetings are to be called, and what notice is required.
- (c) Meetings of the trustees shall be held not less than **six** times per year save where the Committee itself shall by a simple majority resolve not to meet.
- (d) The Chairperson and the Secretary shall have discretion to call further meetings of the Committee if they consider it to be in the interests of the CIO.
- (e) The Secretary shall give all the members of the Committee not less than seven days' notice of a meeting in writing or by electronic means.

### 21.2. Chairing of Meetings

Meetings of the trustees will normally be chaired by the Chairperson of the CIO. The charity trustees may appoint one of their number to chair their meetings and may at any time revoke such appointment. If no one has been so appointed, or if the person appointed is unwilling to preside or is not present within 10 minutes after the time of the meeting, the charity trustees present may appoint one of their number to chair that meeting.

### 21.3. Procedure at Meetings

- (a) No decision shall be taken at a meeting unless a quorum is present at the time when the decision is taken. The quorum of those meetings shall be one third of the total trustees which must include at least one Executive Officer. A charity trustee shall not be counted in the quorum present when any decision is made about a matter upon which he or she is not entitled to vote.

- (b) In the event that a quorum is not present within 30 minutes of the published start time, a meeting shall stand adjourned to the time and date falling seven days after the date of the meeting, or such other date and time as may be determined by the Chairperson. If a quorum is not present at the adjourned meeting then those Committee members attending may act for the purpose of calling a Special General Meeting of the members, to which the provisions as to minimum notice contained in clause 12 of this constitution (General meetings of members) shall not apply.
- (c) Decisions at the meeting shall be made by a simple majority of those eligible to vote. In the event of equality of votes the Chairperson (or the acting Chairperson of that meeting) shall have a casting or additional vote.
- (d) The Secretary, or in his/her absence a member of the Committee, shall take minutes.

21.4. Participation in meetings by electronic means

- (a) A meeting may be held by suitable electronic means agreed by the charity trustees in which each participant may communicate with all the other participants.
- (b) Any charity trustee participating at a meeting by suitable electronic means agreed by the charity trustees in which a participant or participants may communicate with all the other participants shall qualify as being present at the meeting.
- (c) Meetings held by electronic means must comply with rules for meetings, including chairing and the taking of minutes.

21.5. "Present" includes being present by suitable electronic means agreed by the trustees in which a participant or participants may communicate with all the other participants.

21.6 A resolution in writing or in electronic form agreed by a simple majority of all the trustees entitled to receive notice of a meeting of trustees or of a committee of trustees and to vote upon the resolution shall be as valid and effectual as if it had been passed at a meeting of the trustees or (as the case may be) a committee of trustees duly convened and held provided that:

- (a) a copy of the resolution is sent or submitted to all the trustees eligible to vote; and
- (b) a simple majority of trustees has signified its agreement to the resolution in an authenticated document or documents which are received at the registered office within the period of 28 days beginning with the circulation date.
- (c) The resolution in writing may comprise several documents containing the text of the resolution in like form to each of which one or more trustees has signified their agreement.

## 22. Saving Provisions

22.1 Subject to sub-clause (22.2.) of this clause, all decisions of the charity trustees, or of a committee of charity trustees, shall be valid notwithstanding the participation in any vote of a charity trustee:

- (a) Who was disqualified from holding office;
- (b) Who had previously retired or who had been obliged by the constitution to vacate office;
- (c) Who was not entitled to vote on the matter, whether by reason of a conflict of interest or otherwise;

if, without the vote of that charity trustee and that charity trustee being counted in the quorum, the decision has been made by a majority of the charity trustees at a quorate meeting.

22.2 Sub-clause (22.1) of this clause does not permit a charity trustee to keep any benefit that may be conferred upon him or her by a resolution of the charity trustees or of a committee of charity trustees if, but for clause (22.1), the resolution would have been void, or if the charity trustee has not complied with clause 8 of this constitution (Conflicts of interest and conflicts of loyalty).

## 23. Execution of Documents

23.1 The CIO shall execute documents by signature which shall include electronic signatures where permitted by law or affixing its seal (if it has one).

23.2 A document is validly executed by signature if it is signed by at least two of the charity trustees.

## **24. Use of Electronic Communications**

### **24.1 General**

- (a) The CIO will comply with the requirements of the Communications Provisions in the General Regulations and in particular:
  - (i) The requirement to provide within 21 days to any member on request a hard copy of any document or information sent to the member otherwise than in hard copy form;
  - (ii) Any requirements to provide information to the Commission in a particular form or manner.

### **24.2 To the CIO**

- (a) Any member or charity trustee of the CIO may communicate electronically with the CIO to an address specified by the CIO for the purpose, so long as the communication is authenticated in a manner which is satisfactory to the CIO.

### **24.3 By the CIO**

- (a) Any member or charity trustee of the CIO, by providing the CIO with his or her email address or similar, is taken to have agreed to receive communications from the CIO in electronic form at that address, unless the member has indicated to the CIO his or her unwillingness to receive such communications in that form.
- (b) The charity trustees may, subject to compliance with any legal requirements, by means of publication on its website:
  - (i) Provide the members with the notice referred to in clause 13.3 of this constitution (Notice of general meetings).
  - (ii) Give charity trustees notice of their meetings in accordance with clause 21.1 of this constitution (Calling meetings).
- (c) The charity trustees must:
  - (i) Take reasonable steps to ensure that members and charity trustees are promptly notified of the publication of any such notice or proposal;
  - (ii) Send any such notice or proposal in hard copy form to any member or charity trustee who has not consented to receive communications in electronic form.

## **25. Keeping of Registers**

25.1. The CIO must comply with its obligations under the General Regulations in relation to the keeping of, and provision of access to, registers of its members and charity trustees.

## **26. Minutes**

26.1. The charity trustees must keep minutes of all:

26.1.1 Appointments of officers made by the charity trustees;

26.1.2. Proceedings at general meetings of the CIO;

26.1.3. Meetings of the charity trustees and committees and sub-committees of charity trustees including:

- (i) The names of the trustees and/or voting members present at the meeting;
- (ii) The decisions made at the meetings; and
- (iii) Where appropriate the reasons for the decisions;

26.1.4. Decisions made by the charity trustees otherwise than in meetings.

26.1.5. the Secretary, or in his/her absence, a trustee shall take minutes at all meetings.

## **27. Accounting Records, Accounts, Annual Reports and Returns, Register Maintenance**

- 27.1 The charity trustees must comply with the requirements of the Charities Act 2011 with regard to the keeping of accounting records, to the preparation and scrutiny of statements of accounts, and to the preparation of annual reports and returns. The statements of accounts, reports and returns must be sent to the Charity Commission, regardless of the income of the CIO, within 10 months of the financial year end.
- 27.2 The charity trustees must comply with their obligation to inform the Commission within 28 days of any change in the particulars of the CIO entered on the Central Register of Charities.
- 27.3 The CIO must retain all minutes and accounting records, for example, cash books, invoices, receipts, Gift Aid records etc. for at least 6 years.

## **28. Rules**

- 28.1 The charity trustees may from time to time make such reasonable and proper rules or by-laws as they may deem necessary or expedient for the proper conduct and management of the CIO, but such rules or by-laws must not be inconsistent with any provision of this constitution. Copies of any such rules or by-laws currently in force must be made available to any member of the CIO on request.
- 28.2 The by-laws may regulate the following matters but are not restricted to them:
- (a) the admission of members of the Charity (including the admission of organisations to membership) and the rights and privileges of such members, and the entrance fees, subscriptions and other fees or payments to be made by members;
  - (b) the conduct of members of the Charity in relation to one another, and to the Charity's employees and volunteers;
  - (c) the setting aside of the whole or any part or parts of the Charity's premises at any particular time or times or for any particular purpose or purposes;
  - (d) the procedure at general meetings and meetings of the trustees in so far as such procedure is not regulated by the constitution;
  - (e) the keeping and authenticating of records. (If regulations made under this clause permit records of the Charity to be kept in electronic form and require a trustee to sign the record, the regulations must specify a method of recording the signature that enables it to be properly authenticated).
  - (f) generally, all such matters as are commonly the subject matter of charity rules or by-laws.
- 28.3 The Charity in general meeting has the power to alter, add to or repeal the by-laws.
- 28.4 The trustees must adopt such means as they think sufficient to bring the by-laws to the notice of members of the Charity.
- 28.5 The by-laws shall be binding on all members of the Charity. No by-law shall be inconsistent with, or shall affect or repeal anything contained in, the constitution.
- 28.6 The by-laws may be altered by resolution at an annual or General Meeting provided that the resolution is carried by a majority of at least (two-thirds) of members present and entitled to vote at the general meeting. No amendment(s) to the by-laws shall become effective until such amendment(s) shall have been submitted to and validated by such person as is authorised to do so by the Swim England East Midland Region.

## **29. Disputes**

- 29.1 If a dispute arises between members of the CIO about the validity or propriety of anything done by the members under this constitution, and the dispute cannot be resolved by agreement, the parties to the dispute must first try in good faith to settle the dispute by mediation before resorting to litigation.

29.2 The CIO shall comply with the relevant Swim England Judicial Regulations for handling Internal Club Disputes. See also clause 11.4.(b) (vi) of this constitution.

### 30. Amendment of Constitution

As provided by clauses 224-227 of the Charities Act 2011:

- 30.1. Any alteration of clause 3 of this constitution (Objects), clause 30 (Voluntary winding up or dissolution), this clause (29), or of any provision where the alteration would provide authorisation for any benefit to be obtained by charity trustees or members of the CIO or persons connected with them, requires the prior written / email consent of the Charity Commission.
- 30.2. No amendment that is inconsistent with the provisions of the Charities Act 2011 or the General Regulations shall be valid.
- 30.3. A copy of any resolution altering the constitution, together with a copy of the CIO's constitution as amended, must be sent to the Commission within 15 days from the date on which the resolution is passed. The amendment does not take effect until it has been recorded in the Register of Charities.
- 30.4. Any provision contained in this constitution may be amended, provided that any such amendment is made by resolution passed by a simple majority of the members present and voting at a general meeting and notified and validated by such person as is authorised to do so by the Swim England East Midland Region, as compatible to affiliation.

### 31. Voluntary Winding Up or Dissolution

- 31.1. As provided by the Dissolution Regulations, the CIO may be dissolved by resolution of its members. Any decision by the members to wind up or dissolve the CIO can only be made:
  - (a) At a general meeting of the members of the CIO called in accordance with clause 13 of this constitution (General Meetings of Members) of which **not less than 14 days' notice** has been given to those eligible to attend and vote:
    - (i) By a resolution passed by a 75% majority of those voting, or
    - (ii) By a resolution passed by decision taken without a vote and without any expression of dissent in response to the question put to the general meeting; or
  - (b) By a resolution agreed in writing by all members of the CIO.
- 31.2. Subject to the payment of all the CIO's debts:
  - (a) Any resolution for the winding up of the CIO, or for the dissolution of the CIO without winding up, may contain a provision directing how any remaining assets of the CIO shall be applied.
  - (b) If the resolution does not contain such a provision, the charity trustees must decide how any remaining assets of the CIO shall be applied.
  - (c) In either case the remaining assets must be applied for charitable purposes the same as or similar to those of the CIO.
- 31.3. The CIO must observe the requirements of the Dissolution Regulations in applying to the Commission for the CIO to be removed from the Register of Charities, and in particular:
  - (a) The charity trustees must send with their application to the Commission:
    - (i) A copy of the resolution passed by the members of the CIO;
    - (ii) A declaration by the charity trustees that any debts and other liabilities of the CIO have been settled or otherwise provided for in full; and
    - (iii) A statement by the charity trustees setting out the way in which any property of the CIO has been or is to be applied prior to its dissolution in accordance with this constitution;

- (b) The charity trustees must ensure that a copy of the application is sent within seven days to every member and employee of the CIO, and to any charity trustee of the CIO who was not privy to the application.
- 31.4. If the CIO is to be wound up or dissolved in any other circumstances, the provisions of the Dissolution Regulations must be followed.
- 31.5. After the CIO is wound up, the trustees must arrange for the accounting books and records of the CIO (including cash books, invoices and receipts) to be kept for at least three years after the year they were made. If the trustees are obliged to send the CIO's accounts to the Commission they must do so.
- 31.6. If the members resolve to dissolve the Charity the trustees will remain in office as charity trustees and be responsible for winding up the affairs of the Charity in accordance with this clause. The former charity trustees remain responsible for the decisions they made while they were in office.
- 31.7. In no circumstances shall the net assets of the Charity be paid to or distributed among the members of the Charity (except to a member that is itself a Charity) and if no resolution in accordance with Clause 31 is passed by the members or the trustees then the net assets of the Charity shall be applied for charitable purposes as directed by the Court or the Commission.

## 32. Interpretation

32.1. In this constitution:

**'connected person'** means:

- (a) A child, parent, grandchild, grandparent, brother or sister of the charity trustee;
- (b) The spouse or civil partner of the charity trustee or of any person falling within sub-clause (a) above;
- (c) A person carrying on business in partnership with the charity trustee or with any person falling within sub-clause (a) or (b) above;
- (d) An institution which is controlled:
  - (i) By the charity trustee or any connected person falling within sub-clause (a), (b), or (c) above; or
  - (ii) By two or more persons falling within sub-clause (d)(i), when taken together
- (e) A body corporate in which:
  - (i) The charity trustee or any connected person falling within sub-clauses (a) to (c) has a substantial interest; or
  - (ii) Two or more persons falling within sub-clause (e)(i) who, when taken together, have a substantial interest.

Section 118 of the Charities Act 2011 shall apply for the purposes of interpreting the terms used in this constitution.

**'General Regulations'** means the Charitable Incorporated Organisations (General) Regulations 2012.

**'Dissolution Regulations'** means the Charitable Incorporated Organisations (Insolvency and Dissolution) Regulations 2012.

The **'Communications Provisions'** means the Communications Provisions in [Part 10, Chapter 4] of the General Regulations.

**'Charity trustee'** means a charity trustee of the CIO.

A **'poll'** means a counted vote or ballot, usually (but not necessarily) in writing.

32.2. In this Constitution:

<b>“address”</b>	means a postal address or, for the purposes of electronic communication, a fax number, an e-mail or postal address or a telephone number for receiving text messages in each case registered with the Charity;
<b>“Swim England Child Safeguarding”</b>	means Swim England’s Child Safeguarding Policy and Procedures (“Wavepower”) that are in force from time to time;
<b>“Swim England Regulations ”</b>	means Articles, Regulations and Technical Rules of Swim England that are in force from time to time in the Swim England Handbook (a copy of the current rules may be found on the Swim England website <a href="https://www.swimming.org/swimengland/swim-england-handbook/">https://www.swimming.org/swimengland/swim-england-handbook/</a> )
<b>“Chairperson”</b>	means any person appointed to perform the duties of the chairperson of the Charity;
<b>“the Charity”</b>	means the charity incorporated organisation intended to be regulated by this constitution;
<b>“clear days”</b>	in relation to the period of notice means a period excluding: <ul style="list-style-type: none"> <li>• the day when the notice is given or deemed to be given; and</li> <li>• the day for which it is given or on which it is to take effect;</li> </ul>
<b>“the Commission”</b>	means the Charity Commission for England and Wales;
<b>“Co-opted Members”</b>	means members who have been co-opted by the trustees in accordance with the Constitution;
<b>“the trustees”</b>	means the trustees of the Charity and includes the Executive Officers. The trustees are charity trustees as defined by Section 97 of the Charities Act 1993;
<b>“document”</b>	includes, unless otherwise specified, any document sent or supplied in electronic form;
<b>“Executive Officers”</b>	means the Chairperson, Secretary and Treasurer;
<b>“Governing Body Rules”</b>	has the meaning set out in Clause 31. (3);
<b>“Membership Secretary”</b>	means any person appointed to perform the duties of the membership secretary of the Charity;
<b>“the Memorandum”</b>	means the Charity’s memorandum of association;
<b>“Non-Executive Officers”</b>	means the Welfare Officer;
<b>“Officers”</b>	means the committee members;



<b>“President”/</b> <b>”Vice-President”</b>	means a member of the Charity, or in the case of a non- member, an honorary member, to perform the duties of respectively the president or vice president of the Charity;
<b>“Review Panel”</b>	means not less than three members (who may or may not be trustees) and one independent member nominated by Swim England East Midland Region;
<b>“The Seal”</b>	means the common seal of the Charity if it has one;
<b>“Secretary”</b>	means any person appointed to perform the duties of the secretary of the Charity;
<b>“Sports Equity”</b>	means the definition of sports equity as in force from time to time as laid down by Sport England (currently meaning “fairness in sport, equality of access, recognising inequalities and taking steps to address them. It is about changing the culture and structure of sport to ensure it becomes equally accessible to everyone in society”);
<b>“Treasurer”</b>	means any person appointed to perform the duties of treasurer of the Charity’s finances; and
<b>“The United Kingdom”</b>	means Great Britain and Northern Ireland.

**33. Acknowledgement**

- 33.1 The Members acknowledge that this governing document constitutes a legally binding contract to regulate the relationship of the members with each other and the CIO.
- 33.2 This constitution must be readily available to all CIO members. This may be via posting on a club website or shared with members annually at time of membership renewal.
- 33.3 The following statement must appear on CIO membership renewal forms and is to be signed by the member and must also be countersigned by the parent, or a person having parental responsibility for the member, if under 18 years of age:

**I acknowledge receipt of the governing document of Derby Excel Swimming Club and confirm my understanding and acceptance that such document (as amended from time to time) shall govern my membership of the CIO.**

**I further acknowledge and accept the responsibilities of membership upon members as set out in these rules.**